

**MF 01-23**

Tax Type: Motor Fuel Use Tax

Issue: Failure To Have Motor Fuel Use Tax Decal/Permit

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

---

**DEPARTMENT OF REVENUE  
STATE OF ILLINOIS**

v.

**John Doe**

)  
)  
)  
)  
) Mimi Brin  
) Administrative Law Judge

---

**RECOMMENDATION FOR DISPOSITION**

This matter comes on for hearing pursuant to the taxpayer's timely protest of Notice of Tax Liability for Motor Fuel Use Tax 37-364460 P ("NTL") issued by the Department on February 16, 2001 as a result of taxpayer's operation of a commercial motor vehicle in Illinois without a valid motor fuel use tax license and without properly displaying required decals or without a valid single-trip permit. Taxpayer appeared for hearing and testified thereat. Following the submission of all evidence and a review of the record, it is recommended that this matter be resolved in favor of the taxpayer. In support thereof I make the following findings of fact and conclusions of law:

**Findings of Fact:**

1. The Department issued to taxpayer NTL 000000000000, assessing a penalty of \$1,000 based upon taxpayer's operation of a commercial motor

vehicle in Illinois without a valid motor fuel use tax license and without, *inter alia*, displaying required decals. Department Gr. Ex. No. 1

2. On or about September 3, 2000, taxpayer caused to be placed into the mail his application and remittance for the IFTA license and decals. Transcript, *passim*
3. On September 7, 2000 the taxpayer was cited for his failure to have the IFTA license and decals. Department Gr. Ex. No. 1

### **Conclusions of Law:**

The Motor Fuel Tax Law, 35 ILCS 505/1 *et seq.*, (“MFTL”) provides that “...no motor carrier shall operate in Illinois without first securing a motor fuel use tax license and decals from the Department or a motor fuel use tax license and decals issued under the International Fuel Tax Agreement by any member jurisdiction.” *Id.* at 505/13a.4

Taxpayer caused to be mailed to the Department, on September 3, 2000, the necessary application and remittance for the license and decals. Taxpayer Gr. Ex. No. 1  
This action preceded his receipt of the citation that is the basis of this penalty action.

The pertinent provision in the MFTL reads as follows:

if a commercial motor vehicle is found to be operating in Illinois without a valid motor fuel use tax license and without properly displaying decals required by Section 13a.4 or without a valid single trip permit when required by Section 13a.5 of the Act or a valid 30-day International Fuel Tax Agreement temporary permit, the operator must pay a minimum of \$1,000 as a penalty.

35 ILCS 505/13a.6(b)

Department regulations also provide guidance in this particular matter. Specifically, 86 Ill. Admin. Code, section 500.400 provides, in pertinent part:

- a) Any report, claim, tax return, statement or other document required or authorized to be filed with or any payment made to the Department of Revenue, which document or payment is transmitted through the United States mail, will be deemed to have been filed with and received by the Department on the date shown by the post office cancellation mark stamped upon the envelope or other appropriate wrapper containing it. If mailed but not received by the Department, or if received, both the cancellation mark is illegible, erroneous or omitted, the document or payment will be deemed to have been filed on the date it was mailed if the sender establishes by competent evidence that the document or payment was deposited, properly addressed, in the United States mail on or before the date on which it was required or authorized to be filed or was due.

I find that the taxpayer provided competent evidence that he mailed the necessary remittance to the Department before the date of the citation that is the basis of this penalty. In fact, based upon his remittance of September 3, taxpayer did receive the necessary license and decal. That the taxpayer did not physically have these prior to the date of the citation is a result of the realities of the operation of the Department recognizing the volume of business it is required to process, and it also recognizes the necessity of business, in that taxpayer needed to operate his vehicle while the processing of the license and decal was pending.

**WHEREFORE**, for the reasons stated above, it is my recommendation that the Notice of Tax Liability at issue be cancelled.

9/10/01

---

Mimi Brin  
Administrative Law Judge